



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 5, 1991

Mr. William W. Keas, Jr.  
Attorney for Calallen Independent  
School District  
101 North Shoreline, Suite 216  
Corpus Christi, Texas 78401

OR91-541

Dear Mr. Keas:

You ask whether certain information is excepted from required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13714.

You have received a request for information relating to allegations of sexual harassment against an employee of the Calallen Independent School District (the district), which you represent. Specifically, the requestor seeks a report prepared by an independent law firm which provides factual information and recommendation regarding the alleged sexual harassment. In addition, the requestor seeks certain administrative staff and instructions manuals. You claim that the requested report is excepted from required public disclosure by sections 3(a)(1), 3(a)(2), 3(a)(3), and 3(a)(11) of the Open Records Act. However, you do not address the availability of the other materials requested. Where a governmental body fails to indicate an applicable exception, the information is presumed to be open. Open Records Decision No. 565 (1990) at 10.

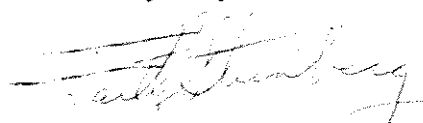
Previous open records decisions issued by this office resolve your request. Open Records Decision No. 551 (1990) held that section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated. Section 3(a)(3) required parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.* The litigation exception may be applied to records relating to a contested case before an administrative agency. Open Records

Decision No. 368 (1983).

You advise us that the allegations of sexual harassment are currently being investigated by the Texas Education Agency. You contend that this investigation will likely result in a contested administrative hearing. You have also provided us with an affidavit which maintains that the school district has itself been threatened with litigation. On the basis of these assertions, we conclude that litigation may be reasonably anticipated. Furthermore, having reviewed the documents submitted to us, we conclude that the report relates to that litigation and thus may be withheld from required public disclosure by section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation at issue and only for information which is not disclosed by the discovery process or by court order. Because we resolve your request under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(2), and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-541.

Yours very truly,



Faith Steinberg  
Assistant Attorney General  
Opinion Committee

FS/GK/lcd

Ref.: ID# 13714, 13724, 13729, 13807,